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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

12 JERMAINE ROBINSON, ) 3:08-cv-00389-HDM-VPC  
13 Plaintiff, )  
14 vs. ) ORDER  
15 JAMES BACA, et al., )  
16 Defendants. )

The plaintiff has filed objections to the report and recommendation of the United States Magistrate Judge (#58), which were received by the court after it filed its order adopting the report and recommendation. The court has considered the plaintiff's objections, and hereby reaffirms its order adopting and accepting the magistrate judge's report and recommendation. The court notes the following in response to the plaintiff's objections.

First, plaintiff asserts that the report and recommendation  
contains erroneous statements. Those statements identified by the  
plaintiff were not material to the court's determination.

1       Second, plaintiff asserts a factual dispute exists as to  
2 whether he was treated weekly after his injury. Whether plaintiff  
3 was treated weekly was not material to the court's determination.  
4 Instead, the court's finding that defendants did not exhibit  
5 deliberate indifference to plaintiff's serious medical needs was  
6 based the frequent treatment of plaintiff's injury, not necessarily  
7 on its weekly occurrence.

8       Third, the plaintiff asserts that the magistrate judge makes  
9 findings of fact with respect to his Equal Protection claim. The  
10 plaintiff does not identify what findings of fact were made, nor  
11 can the court ascertain any from the report. Rather, the magistrate  
12 judge simply recommends *sua sponte* dismissal of this cause of  
13 action for failure to state a claim.

14       Fourth, with respect to his state law claims plaintiff asserts  
15 that the court should either exercise supplemental jurisdiction or  
16 remand them to state court. The court reaffirms its decision  
17 declining to exercise supplemental jurisdiction over the state law  
18 claims. Moreover, as this case was originally filed in federal  
19 court, the state causes of action cannot be remanded to the state  
20 court.

21       Fifth, plaintiff asserts the magistrate judge did not address  
22 his Fed. R. Civ. P. 56(f) argument. While true, the court did  
23 address this aspect of plaintiff's opposition in its order adopting  
24 the report and recommendation.

25       Finally, the plaintiff asserts that the magistrate judge  
26 failed to address the immunity arguments. The report and  
27 recommendation does address Eleventh Amendment immunity, and the  
28 court is not required to reach qualified immunity as plaintiff has

1 not proven a constitutional violation.

2 The remainder of plaintiff's objections are vague and  
3 conclusory, especially regarding his conspiracy claim.

4 Accordingly, after fully considering the plaintiff's objections and  
5 considering the pleadings and memoranda of the parties and other  
6 relevant matters of record in accordance with the requirements of  
7 28 U.S.C. § 636 and applicable law, the court hereby reaffirms its  
8 order dated September 15, 2010 (#59) adopting and accepting the  
9 report and recommendation of the United States Magistrate Judge.

10 **IT IS SO ORDERED.**

11 DATED: This 20th day of September, 2010.

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14 UNITED STATES DISTRICT JUDGE  
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